

the last day on which WWOR-TV provided regularly scheduled hourly news updates between 4:00 and 7:00 p.m. was Friday, July 10, 2009.

Partnerships – Exhibit A stated that, in 2007, WWOR-TV partnered with the Record newspaper and Rasmussen, a provider of polling data, to enhance its local coverage.

- (a) The station continues to work with The Record newspaper to enhance its news coverage; this partnership involves news managers of both outlets conferring regularly about content sharing. WWOR-TV video appears on the *Record's* web site, while reports from the newspaper assist station reporters with story development. WWOR-TV and the newspaper also partnered to host the 2009 debate between candidates for New Jersey Governor.

The station also continues to partner with Rasmussen Reports, a New Jersey-based polling company. Rasmussen has helped WWOR-TV build a reputation as a leader in political coverage. In addition to political polling information, the partnership has enabled WWOR-TV to break news on New Jersey social, economic and health issues.

- (b) No response is required.

News Crawls – Exhibit A stated that WWOR-TV regularly ran news crawls to provide viewers with up-to-date coverage of news developments, such as school closings, major traffic problems and New Jersey election results.

- (a) The station continues to regularly run news crawls to provide viewers with up-to-date coverage of news developments. Since June 1, 2007, these crawls have continued to provide information on topics such as school closings, transit closings, major traffic, and breaking news (such as a suspicious package at Newark airport).
- (b) No response is required.

Weekly Public Affairs Programming – Exhibit A stated that WWOR-TV broadcast weekly half-hour public affairs programs *New Jersey Now* and *Real Talk*, which aired for one-half hour on Sundays at noon and 12:30 p.m., respectively.

Exhibit A also stated that *New Jersey Now* provided a forum for New Jersey politicians to address issues of importance to New Jersey residents and that *Real Talk* presented local social, economic and cultural issues, as well as local personalities, providing viewers access to civic and community leaders. Exhibit A also stated that WWOR-TV moved the air time for each of these programs from early Sunday morning to Sunday mid-day.

- (a) *New Jersey Now* continues to air on Sundays at noon and it continues to provide a forum for New Jersey politicians to address issues of importance to northern New Jersey residents. In particular, since June 1, 2007, *New Jersey Now* has featured interviews with candidates for the New Jersey state legislature; candidates for U.S. Senate and House seats in New Jersey; candidates for New Jersey Governor; candidates for the Newark mayoral race; and candidates for the Bergen County Executive race.

Changes regarding the number of hours of public affairs programming are identified in the responses to Request Nos. 1 and 2.

- (b) No response is required except as set forth in the responses to Request Nos. 1 and 2, which are incorporated by reference.

Local Sports and Entertainment – Exhibit A stated that WWOR-TV provided a wide variety of entertainment and sports programming, including regular coverage of New Jersey Nets, New York Giants and New York Yankees sporting events. Exhibit A also stated that the station covered entertainment programs responsive to its audience (including, for example, annual coverage of the National Puerto Rican Day Parade and the MDA Telethon). Exhibit A also stated that WWOR-TV began carrying the McDonald's Gospelfest in 2007, which it planned to broadcast on a yearly basis. Exhibit A also stated that the station recently broadcast the United Negro College Fund's Tribute to Smokey Robinson.

- (a) The station continues to provide a wide variety of entertainment and sports programming, including regular coverage of sporting events of the New Jersey Nets, New York Jets and Giants (both of which play their home games in New Jersey) and New York Yankees. Since June 1, 2007, WWOR-TV also has added a post-game show following New York Giants football games (it has continued to carry a post-game show following New York Yankees games). In 2009,

WWOR-TV aired a special *Farewell to Giants Stadium* program (Giants Stadium was located in northern New Jersey, as is the Giants' new stadium). In 2008 and 2009, the station also broadcast the New Jersey High School Classic football game.

The station also continues to cover entertainment programs responsive to its audience; WWOR-TV has broadcast the National Puerto Rican Day Parade, the MDA Telethon and McDonald's Gospelfest in each of 2007, 2008, 2009 and 2010. WWOR-TV also has broadcast the United Negro College Fund Telethon in January of 2008, 2009, 2010 and 2011.

- (b) No response is required.

WWOR-TV's Commitment to New Jersey – Exhibit A stated that WWOR-TV's main studio is located in a 110,000 square foot office complex in Secaucus, New Jersey and that the station had invested nearly \$12 million toward capital improvements of the facility since 2001. Exhibit A also stated that WWOR-TV employed more than 250 individuals at the Secaucus facility and that employees often took part in a variety of events in and around northern New Jersey. Exhibit A also stated that WWOR-TV partnered with various local charitable organizations, to help serve the community.

- (a) The station's main studio remains located in a 110,000 square foot office complex in Secaucus, New Jersey. Fox has invested more than \$12 million into this facility. WWOR-TV employees also continue to take part in a variety of events in and around northern New Jersey (including, for example Connection Day events in East Rutherford and the Kaboom Fireworks event in Red Bank).

The station also continues to partner with community organizations in northern New Jersey, including, for example, A Partnership for a Drug Free New Jersey (which bestowed on WWOR-TV its Excellence in Public Service Award in 2009); the Alliance for Lupus Research; the Susan G. Komen Walk for the Cure in Newark; and the March of Dimes New Jersey.

Changes regarding the number of employees are identified in the response to Request Nos. 3 and 4.

- (b) No response is required except as set forth in the responses to Request Nos. 3 and 4, which are incorporated by reference.

Training and Internships – Exhibit A stated that WWOR-TV operated a paid apprentice program to identify qualified individuals for work in the broadcasting field. Exhibit A also stated that the station provided internship opportunities for college students; supported the Emma Bowen Foundation for Minority Interest in Media (which helps fund a job and career development program); and partnered with One Hundred Black Men on a mentoring program.

- (a) The station still operates both a paid apprenticeship/training program and an internship program for college students. The station also has continued to partner with the Emma Bowen Foundation for Minority Interest in Media and has worked with the Fair Media Council at forums in Hudson County, New Jersey. WWOR-TV's Vice President for News also volunteers as a member of the Monmouth University Advisory Council, which is dedicated to increasing students' exposure to the communications field. And WWOR-TV has initiated the Brenda Blackmon Annual Journalism Retreat, which invites college seniors from New Jersey to an event each December organized by station news anchor Brenda Blackmon to provide students with insight into the local television news industry.

In particular, beginning in 2009 the station began to aggressively recruit college students to serve as interns. WWOR-TV encouraged New Jersey students to "stay at home," rather than take jobs in New York or Philadelphia. Station representatives visited schools including Rutgers University, Montclair State University, Ramapo College, Fairleigh Dickinson University, Seton Hall University, Monmouth University and Caldwell College. The executive and associate producers of the station's newscasts developed a goal to make WWOR-TV the "choice" for communications interns in New Jersey. The station designed a program for interns so that students rotate through different positions in the

newsroom in order to gain a well-rounded experience of life in television news.¹⁵

(b) No response is required.

As the foregoing demonstrates, Fox has maintained an impressive record of service to New Jersey, both during the preceding term of its license and since June 1, 2007. There is no reason to doubt Fox's commitment to maintain this service for the indefinite future.

6. **To the extent any information in Section 2 of Exhibit A of the August 26 Letters, any other version of Exhibit A that was submitted in this proceeding (including any similar summaries of the Station's performance, such as "WWOR's Service to New Jersey: Key Facts," that were attached to *ex parte* notices filed by the Licensee in this proceeding), or any testimony, declaration, pleading, or letter regarding WWOR-TV's performance was incorrect or misleading when it was submitted, (a) identify the incorrect or misleading information; (b) explain why it was not corrected before it was submitted; (c) state whether and if so, when, the Licensee submitted a statement furnishing additional or corrected information; (d) state whether and if so, when and how, the Licensee served any such statement on all parties of record; and (e) if the Licensee did not submit such a statement or serve all parties, explain why it did not do so. To the extent the requested information is provided in the O'Connell Declaration, a reference to the applicable paragraph is sufficient.**

Other than to the extent set forth in this letter, and subject to the response to Request No. 9, Fox is not aware of what the Commission calls "incorrect or misleading" information in Section 2 of Exhibit A of the August 26 Letters, any other version of Exhibit A that was submitted in the above-referenced proceeding (including any similar summaries of the Station's performance, such as "WWOR's Service to New Jersey: Key Facts," that were attached to *ex parte* notices filed by the Licensee in this proceeding), or any testimony, declaration, pleading, or letter regarding WWOR-TV's performance.

¹⁵ The paid apprenticeship/training program runs periodically, when a qualified candidate applies and is accepted. Although no WWOR-TV employee currently is taking part in this program, several current station employees previously took part; the most recent employee to take part completed the program approximately two months ago.

Without waiving any legal defenses or objections it may have, Fox answers Request No. 6 as follows:

- (a) Fox is not aware of any material information in Section 2 of Exhibit A that is incorrect or misleading. Nevertheless, Fox understands that the Commission is investigating allegations that Exhibit A contains incorrect or misleading information with respect to certain news and public affairs programming and staffing levels. Other than the statements identified by the Commission in the LOI, Fox is not aware of incorrect or misleading information in Exhibit A or similar documents. As more fully explained in the response to Request No. 9, in light of Section 309(k) of the Act and FCC precedent regarding the First Amendment, Fox does not believe that even these statements amount to a violation of any FCC Rule or policy.
- (b) A full explanation as to the circumstances surrounding the submission of the August 26 Letters is set forth in Fox's January 2011 Letter. *See, e.g.,* O'Connell Declaration ¶¶ 3-8.
- (c) Yes, Fox submitted a statement furnishing additional or corrected information in the manner, and on the dates, described in the January 2011 Letter. *See, e.g.,* O'Connell Declaration ¶¶ 3-8.
- (d) Fox publicly disclosed the contents of the September 4 Letter and September 23 Letter. Fox filed copies of the letters electronically with the Commission as part of the docket in the above-referenced matter via the Electronic Comment Filing System and hand delivered the originals and copies of the letters to the Commission's Secretary's Office, for inclusion as part of the docket. The letters are available for public review (and have been since shortly after their submission). Fox did not serve copies of these letters on "parties of record." As more fully explained in the response to Request No. 9, Section 1.65 of the Commission's Rules did not require Fox to serve "parties of record" with copies of the September 4 Letter and the September 23 Letter.
- (e) See the response to Request No. 6(d).

7. **Identify each person responsible for creating and reviewing each version of Exhibit A that was filed with the Commission, including any similar summaries of the Station's performance, such as "WWOR's Service to New Jersey: Key Facts," that were attached to *ex parte* notices filed by the Licensee in this proceeding, and state each person's relationship to the Licensee to the extent not otherwise indicated.**

The following people were involved in creating and reviewing various versions of Exhibit A (and similar summaries of WWOR-TV's performance) that were submitted to the Commission in this proceeding¹⁶:

| Name | Relationship to WWOR-TV |
|----------------|--|
| Dennis Swanson | President, Station Operations, Fox Television Stations, Inc. |
| Lew Leone | General Manager, WWOR-TV |
| Jim Driscoll | Vice President, News Director, WWOR-TV |
| Dan Carlin | Vice President, Programming & Research, WWOR-TV |
| Audrey Pass | Senior Director, Communications and Public Affairs, WWOR-TV |
| Joe Silvestri | Public Affairs Producer, WWOR-TV |
| Jean Fuentes | Senior Vice President, Human Resources, WWOR-TV |
| Iris Sierra | Director of Human Resources, WWOR-TV |

¹⁶ Fox does not interpret Request No. 7 as calling for it to identify its outside legal counsel.

| Name | Relationship to WWOR-TV |
|----------------------|--|
| Kent Von Hertsenberg | Vice President, Finance, WWOR-TV |
| Joseph Di Scipio | Vice President, Legal & FCC Compliance, Fox Television Stations, Inc. (from Sept. 1, 2009 to present) |
| Ellen Agress | Senior Vice President, Deputy General Counsel, News Corporation (indirect parent company of Fox) |
| Maureen O'Connell | Senior Vice President, Regulatory & Government Affairs, News Corporation (indirect parent company of Fox) |
| Dianne Smith | Vice President, Legal & FCC Compliance, Fox Television Stations, Inc. (from Apr. 21, 2008 to Aug. 14, 2009) |
| Molly Pauker | Vice President, Fox Television Stations, Inc. (from Mar. 19, 1990 to Aug. 31, 2008) |

- 8. Identify and provide copies of all documents, whether or not such documents were submitted to the Commission, other than the letters specifically referenced herein, that discuss, reference, or cure any actual, potential, or perceived incorrect or misleading information in Exhibit A or any other submission made by the Licensee in this proceeding.**

Attached as Exhibit 2 are documents responsive to Request No. 8. The produced documents, collected from the persons identified in response to Request No. 7, relate to the presentation of the information regarding news and public affairs programming and staffing in the August 26, 2009 version of Exhibit A as well as the September 4 Letter. Fox does not understand Request No. 8 to seek documents generated in response to Commission inquiries regarding the accuracy of the information regarding news and public affairs programming and staffing in Exhibit A. Exhibit 2 also contains a privilege log with respect to those responsive documents covered by the attorney-client privilege and/or the work product doctrine.

Fox is not logging privileged communications relating to its responses to (i) the letter submitted to the FCC by VNJ on November 27, 2009; and (ii) the letter submitted to the FCC by Media Access Project on December 7, 2010. Fox believes that, because any actual, potential or perceived incorrect or misleading information in Exhibit A to the August 26 Letters was corrected in connection with the September 4 Letter, any privileged communications between Fox and its counsel in connection with Fox's responses to the aforementioned VNJ and Media Access Project letters do not "discuss, reference or cure any actual, potential, or perceived incorrect or misleading information."

9. To the extent not otherwise provided in response to the preceding inquiries, provide any additional information that the Licensee believes may be helpful in our consideration and resolution of this matter.

Fox's use of verb tense to describe WWOR-TV's news and public affairs programming and staffing levels has been accurate throughout this proceeding, with the sole exception of Exhibit A to the August 26 Letters. The use of the present tense in Exhibit A to the August 26 Letters – notwithstanding changes made at the station, and publicly known, in July 2009 – constituted a one-time, isolated oversight that quickly was corrected in a subsequent filing. Under no circumstances, however, was the one-time inadvertent use of the present tense a material misstatement.

Importantly, moreover, the information that Fox inadvertently described in the present tense did not even relate to facts that are legally material in the context of a license renewal proceeding. Further, details pertaining to news programming and staffing levels are not the proper subjects for Commission review as part of a renewal application. In particular, given the backward-looking mandate of Section 309(k) of the Act, and in light of critical First Amendment tenets protecting a free press, the information contained in the August 26 Letters cannot be deemed to constitute material facts or to relate to any matter of decisional significance. And, most importantly with respect to the present inquiry, a review of the facts supplied in this response demonstrates that Fox had no intent to mislead the Commission and had no lack of candor; rather, Fox had a reasonable basis for the assertions made in its submissions, especially in light of its understanding of the relevant legal standard for a license renewal proceeding. Thus, the letters cannot violate Sections 1.17 or 1.65 of the Commission's Rules.

Fox provided the answers set forth above as part of a good-faith effort to demonstrate to the Commission that there has been no violation of any FCC Rule

or policy. That said, Fox does have serious concerns about the nature of this “unusual investigation.”¹⁷

VNJ's Exaggerated Allegations of Misrepresentation and Lack of Candor Cannot Be Squared with the Record

The VNJ allegations that formed the basis for the LOI are inextricably intertwined with VNJ's long-running quest to have the Commission deny WWOR-TV's license renewal application, based on the group's erroneous contention that the station failed to provide adequate service to viewers in northern New Jersey.¹⁸ The allegation here simply has been yet another means by which VNJ seeks to accomplish that objective. Yet, as the record in this nearly 4-year-old proceeding makes clear, WWOR-TV has provided exemplary service to its viewers.¹⁹ The station, which is not affiliated with one of the four major English-language networks, consistently has outperformed the vast majority of similarly-situated stations (many of which provide literally *no* news or public affairs programming).

VNJ's assertions regarding misrepresentation and lack of candor arise as part of the group's efforts to influence the Commission's review of the merits. But these endeavors to cast aspersions on Fox fare no better than VNJ's unsustainable claims about the merits. As the LOI itself notes, Fox filed letters with the Commission in January 2010 and January 2011 providing a full explanation in response to VNJ's charges.²⁰ Fox's letters confirmed that Fox did not submit to the Commission any material factual information that was incorrect, nor did it omit material information necessary to prevent any material factual information from being incorrect or misleading. Likewise, Fox's letters verified that there has not

¹⁷ Brian Stelter, *New Jersey TV Station Is Accused of Failing Its Audience*, New York Times, Feb. 21, 2011 (“WWOR-TV is the subject of an unusual investigation by the Federal Communications Commission . . .”). The LOI is but the latest in a series of unusual steps taken by the Commission in connection with WWOR-TV's renewal application. The Commission also previously held a “rare” public forum on the station's renewal application. *FCC Seeks Public Input on WWOR-TV License Challenge*, Press Release, Free Press (dated Nov. 27, 2007). The decision to release the LOI publicly was itself an atypical development. And, although the record on which it could make a decision about WWOR-TV's renewal has been complete for nearly four years, the Commission has refused to take any action on the merits.

¹⁸ See VNJ Petition to Deny, at 14.

¹⁹ See, e.g., *In re Application for Renewal of Station License of WWOR-TV, Secaucus, NJ*, File No. BRCT-20070201AJT, Opposition to Petition to Deny, filed May 30, 2007 (the “Fox Opposition”).

²⁰ See LOI, at 2 (*citing* the January 2010 Letter and the January 2011 Letter).

been any change in circumstances that rendered WWOR-TV's license renewal application substantially incomplete or inaccurate in any significant respect. Finally, Fox already has shown that there has not been any substantial change in any matter of decisional significance with respect to WWOR-TV's pending renewal application. Based on Fox's letters, even before issuing the LOI, the Commission already had sufficient information to conclude that VNJ's allegations lacked merit and that Fox did not violate Sections 1.17 or 1.65 of the FCC's Rules.

With the benefit of the information provided herein, there should be no question that Fox has not presented to the Commission in this proceeding any material factual information that is incorrect or misleading. Indeed, this response confirms that Fox's submissions of factual statements in the present tense about WWOR-TV's news and public affairs programming (and staffing levels in New Jersey) were fully and completely accurate at all relevant times, aside from the isolated and inadvertent failure to update Exhibit A to the August 26 Letters.

The LOI says that Fox has not "explicitly confirmed or denied the accuracy of VNJ's allegations" regarding changes in WWOR-TV's newscasts and public affairs programs (as well as staffing levels).²¹ As an initial matter, Fox *has* denied the accuracy of VNJ's allegations that it engaged in misrepresentation or lack of candor, both of which require that a person submitting information to (or withholding information from) the FCC have the requisite "intent to deceive."²² As Fox explained in the January 2011 Letter, it "*never intended to mislead* the Commission, and there is no evidence that Fox knowingly or intentionally attempted to deceive anyone."²³ VNJ has asserted that changes in the levels of staffing and programming are relevant because the group's petition to deny was premised on an argument that WWOR-TV did not adequately serve the needs of viewers in northern New Jersey.²⁴ Details about changes in the station's programming and staffing

²¹ *Id.* at 3.

²² See, e.g., January 2011 Letter, at 3 (citing *In re Citadel Broadcasting Co.*, 22 FCC Rcd 7083, 7090 (2007) ("intent to deceive is a necessary and essential element" of misrepresentation and lack of candor)); see also *Mary V. Harris Foundation*, 22 FCC Rcd 16948, 16951 (2007) (concluding that there can be no finding of the requisite intent to deceive if erroneous information "would not have changed the outcome of [the] proceeding"); *In re Fatima Response, Inc.*, 14 FCC Rcd 18543, 18546 (1999) (*recon. dismissed*, 15 FCC Rcd 10520 (2000)) (refusing to "ascribe" to a party a "motive" to deceive when the factual allegations relate to subjects not properly before the Commission for review and when the party, therefore, "would gain no benefit from falsely informing the Commission . . .").

²³ *Id.* at 2.

²⁴ See, e.g., Sandorse Letter.

levels, however, cannot possibly constitute *material* factual information in this proceeding, both because Section 309(k) of the Act mandates that a renewal applicant be evaluated solely based on its performance during the *preceding* term of its license and because the Commission does not sit in judgment over broadcasters' programming choices.

Because Section 309(k) Mandates That Renewal Evaluations Be Based on a Finite Period of Time, Facts Relating to WWOR-TV's Performance Outside the Preceding Term of Its License Are Not Material

Section 309(k) of the Act states that the Commission "shall grant" a station renewal of its broadcast license "if it finds, with respect to that station, *during the preceding term of its license*" that the station has served the public interest and that there have been no serious violations of the Act or the FCC's Rules (and no other violations that taken together constitute a pattern of abuse).²⁵ By its plain terms, this statute reflects Congress' charge that the Commission evaluate a license renewal applicant based on its performance during a fixed period of time. Congress expressly made clear that license terms exist for a finite duration, and the expiration of the term represents the cut-off date as of which an analysis of past performance should take place.

The full Commission has recognized as much, interpreting Section 309(k) as requiring a retrospective review of licensee performance.²⁶ Before 1996, the FCC invited and entertained competing applications when a broadcast station license came up for renewal; as part of this process, the Commission sought to compare and evaluate whether the current licensee or a competitor would provide better service to the station's community going forward. Pursuant to Section 309(k), however, the FCC since 1996 is explicitly prohibited from "consider[ing] whether the public interest, convenience, and necessity might be served by the grant of a license to a person other than the renewal applicant."²⁷

Thus, the Commission has emphasized that "consideration of post-[license] term developments is fundamentally at odds with [the] backwards-looking standard" embodied in Section 309(k) of the Act.²⁸ The FCC consistently has

²⁵ 47 U.S.C. § 309(k)(1) (emphasis supplied).

²⁶ *In re Birach Broadcasting Corp.*, 16 FCC Rcd 5015, 5020 (2001) ("*Birach*") (*aff'd on other grounds sub nom, New World Radio, Inc. v. FCC*, 294 F.3d 164 (D.C. Cir. 2002)).

²⁷ 47 U.S.C. § 309(k)(4).

²⁸ *Birach*, 16 FCC Rcd at 5020.

refused to evaluate a licensee's or station's actions that occur "outside the license term for which the renewal application was filed."²⁹ Even the instructions to FCC Form 303-S, the license renewal application, make clear that a licensee is "required to disclose only violations of the [Act] or the Rules of the Commission that occurred at the subject station during the license term."³⁰

In *Birach*, the FCC explained what is meant by the words "preceding term" in Section 309(k). In reviewing the staff's grant of a renewal application for a station that had not provided *any* broadcast service (let alone any local news programming) until after its license term had expired, the Commission affirmed that it could not consider a station's performance "where the licensee initiated broadcasts for the first time *after the renewal application had been filed and the license term had ended*."³¹ Thus, the FCC determined that when Congress used the words "preceding term" in Section 309(k), it meant the finite block of time running until the expiration date on a station's license.

This interpretation is the only plausible reading of the words "preceding term" consistent with the statutory scheme. It is axiomatic that Congress does not include terms in a statute unless it intends those terms to have meaning.³² But if the Commission were to evaluate a renewal application based on station performance *after* the date on which a license term expired, it would render nugatory the words "preceding term" in Section 309(k), for it would subject all renewal applicants to an ongoing, always extant period of review. Indeed, it would permit

²⁹ *In re K Licensee, Inc.*, 23 FCC Rcd 7824, 7827 (2008); see also *In re Citicasters Licenses, L.P.*, 22 FCC Rcd 19324, 19326 (2007) (construing Section 309(k) as requiring review of a renewal application to be based on "*the preceding term of the station's license*") (emphasis added). Even prior to the 1996 amendment of the Act, the Commission interpreted its renewal mandate as requiring analysis of a station's performance during a specified license term (unless a competing application was filed, permitting a prospective analysis). See *In re Rust Communications Group, Inc.*, 73 F.C.C. 2d 39, 54 (1979) ("[W]e will not consider post-term actions . . . which exist independently of license-term conduct.").

³⁰ FCC Form 303-S, Instructions for Application for Renewal of Broadcast Station License, at 7 (emphasis added). In the application itself, Section II, Question 4 directs licensees to certify that no violations have occurred "during the preceding license term."

³¹ *Birach*, 16 FCC Rcd at 5020 (emphasis added). The Commission upheld grant of the station's renewal on other grounds.

³² *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 37, 843 (1984) (holding that if a statute is unambiguous, then courts "must give effect to the unambiguously expressed intent of Congress"); *Qi-Zhuo v. Meissner*, 70 F.3d 136, 139 (D.C. Cir. 1995) ("An endlessly reiterated principle of statutory construction is that all words in a statute are to be assigned meaning, and that nothing therein is to be construed as surplusage.").

the FCC, simply by refusing to act for years on a pending renewal application, to create never-ending license “terms” and to thereby judge applicants based on daily performance. Had Congress intended renewal applicants to be evaluated on such a rolling basis, it would have said so (and it certainly would not have used the words “preceding term” to cabin the permissible time period for review).

VNJ has questioned this analysis by arguing that, if WWOR-TV’s preceding license term expired in June 2007, as Fox contends, then it would not be permissible for the station to continue operating today.³³ The Commission should be under no such misapprehension. As Section 307(c)(3) of the Act makes clear, with respect to broadcast renewals, “[p]ending any administrative or judicial hearing and final decision on such an application . . . , the Commission shall continue *such license* in effect.”³⁴ Notably, Congress instructed the Commission to continue the *license* in effect pending finality; the statute does not direct the FCC to consider the *license term* to be extended.³⁵

Taken as a whole, the statutory scheme evinces Congress’ clear desire that the FCC conduct review of renewal applications based upon a fixed period of time, as the Commission’s logical construction of Section 309(k) in precedent since 1996 confirms.

As First Amendment-Protected Speech, Neither the Quality Nor the Quantity of News Programming Is an Appropriate Subject for FCC Review in Connection with a Renewal

As Fox initially explained in its opposition to VNJ’s petition to deny, any analysis of WWOR-TV on the basis of the amount or type of programming that it broadcasts would encroach on the First Amendment.³⁶ Even more significantly, a government inquiry specifically directed at a broadcaster’s news and public affairs

³³ See Letter from Charles Lovey, Voice for New Jersey, to Julius Genachowski, Chairman, FCC, MB Docket No. 07-260 (Feb. 15, 2010), at 2.

³⁴ 47 U.S.C. § 307(c)(3) (emphasis supplied).

³⁵ See *id.* Likewise, Section 307(c)(1) of the Act, 47 U.S.C. § 307(c)(1), specifies that “a renewal of [a broadcast] license may be granted from time to time for a term of not to exceed 8 years *from the date of expiration of the preceding license.*” See also 47 C.F.R. § 1.62(a)(1) (“Where there is pending before the Commission at the time of expiration of license any proper and timely application for renewal of license . . . , *such license* shall continue in effect . . . until such time as the Commission shall make a final determination with respect to the renewal application.”) (emphasis added).

³⁶ See Fox Opposition, at 3-4, 11-15.

programming profoundly conflicts with the critical constitutional tenets that protect a free press from government interference. Fox provided the Commission with factual information about WWOR-TV's news and public service programming, and its staffing, solely because of, and to the extent necessary to respond to, the VNJ Petition to Deny – not because the information was necessary to demonstrate compliance with any FCC Rule or policy.

The very decision in the LOI to ask Fox to provide detailed information about its quantities of news and its newsgathering operations and staffing levels presents a dangerous risk of chilling First Amendment-protected speech. As the courts have recognized, “the system of broadcast regulation by Congress and the FCC, as currently structured, provides ample opportunity for substantial chilling of First Amendment freedoms,” and when that structure is used to enforce regulation or review over content choices, the regulatory regime can serve “to facilitate those exercises of power and persuasion which create the chill.”³⁷ A letter of inquiry directed at content “serve[s] as means for communicating official pressures to the licensee,” which can and often does result in the licensee restraining its own speech through self-censorship.³⁸

Once the Commission starts the machinery of enforcement with respect to constitutionally protected speech, the *very investigation* dramatically exacerbates the chilling effect of content review. In doing so, the FCC not only prolongs the negative impact of the inquiry – in this case, WWOR-TV has been waiting nearly four years for the FCC to give the station an answer to its renewal application – but it also increases the extent to which FCC oversight (and the threat of penalties such as license revocation) serves “in effect” as a prior restraint, given that the investigation “causes a speaker of reasonable fortitude to censor itself.”³⁹ Put simply, under no circumstances should journalistic decisions be made with an eye toward how they will be perceived by policy-makers in Washington; yet that is exactly what the Commission's investigation threatens here.

³⁷ See *Cnty.-Serv. Broad. Of Mid-Am., Inc. v. FCC*, 593 F.2d 1102, 1115 (D.C. Cir. 1978) (en banc); see also *MD/DC/DE Broadcasters Ass'n v. FCC*, 236 F.3d 13, 19 (D.C. Cir. 2001) (“Investigation by the licensing authority is a powerful threat, almost guaranteed to induce the desired conduct.”).

³⁸ *Cnty.-Serv. Broad.*, 593 F.2d at 1116 (“chilling effect of a statute” arises from “likelihood [speakers] will censor themselves to avoid official pressure and regulation”).

³⁹ *Action for Children's Television v. FCC*, 59 F.3d 1249, 1260-61 (D.C. Cir. 1995). An investigation raises even more serious constitutional issues when a licensee, by dint of the lengthy and still unresolved pendency of the renewal application, cannot obtain judicial review.

For all of these reasons, the full Commission has been resolute in rejecting requests by advocacy groups to judge renewal applicants based on the content or quantity of their news coverage: “Because journalistic or editorial discretion in the presentation of news and public information is the core concept of the First Amendment’s Free Press guarantee, licensees are entitled to the widest latitude of journalistic discretion”⁴⁰ Moreover, the Commission has emphatically rejected a “quantitative approach” to analyzing licensee performance,⁴¹ and a “licensee is under no obligation to cover each and every newsworthy event which occurs within a station’s service area.”⁴² In fact, because a licensee has “broad discretion to choose, in good faith, which issues are of concern to the community . . . [t]he Commission will not interfere with the broadcaster’s judgment without a showing that the broadcaster was unreasonable or discriminatory in its selection of issues” or unless “the licensee has offered such nominal levels of responsive programming as to have effectively defaulted on its obligation to the discussion of issues facing its community.”⁴³ As the Supreme Court has acknowledged, “the FCC’s oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations; for although ‘the Commission may inquire of licensees what they have done to determine the needs of the community they propose to serve, the Commission may not impose upon them its private notions of what the public ought to hear.’”⁴⁴

⁴⁰ *Letter to Dr. Paul Klite, et. al.*, 12 Comm. Reg. (P&F) 79 (1998) (*aff’d sub nom In re McGraw-Hill Broadcasting Co., Inc., et. al.*, Memorandum Opinion & Order, FCC 01-356 (2001)). “[L]icensees are afforded broad discretion in the scheduling, selection and presentation of programs aired on their stations, and Section 326 of the Communications Act and the First Amendment of the Constitution prohibit any Commission actions which would improperly interfere with the programming decisions of licensees.” *Id.* at 81. *See also In re John Neely, Esq.*, 2007 WL 1246137 (2007) (“[T]he Commission will not take adverse action on a license renewal application based upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.”).

⁴¹ *RKO General, Inc.*, 1 FCC Rcd 1081, 1087 (1986) (citing *In re Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 F.C.C. 2d 1075, 1093-94 (1984) (“*Deregulation Order*”)).

⁴² *In re American Broadcasting Companies, Inc.*, 83 F.C.C. 2d 302, 305 (1980) (citation omitted).

⁴³ *In re: License Renewal Applications of Certain Commercial Television Stations Serving Philadelphia, Pennsylvania*, 5 FCC Rcd 3847, 3847-48 (1990).

⁴⁴ *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 650 (1994) (citing *Network Programming Inquiry, Report and Statement of Policy*, 25 Fed. Reg. 7293 (1960); *Deregulation Order*, 98 F.C.C. 2d at 1091-1092) (other internal citations omitted).

The Commission is on equally tenuous ground in inquiring about Fox's newsgathering capabilities, particularly to the extent that it seeks meticulous details about the number of employees engaged in various types of newsgathering activities (such as the number of editors and number of reporters). Although Fox supplied information about its staffing levels to counter the accusation that it had abandoned New Jersey, Fox submits that the size of a broadcast station's workforce should not be considered a relevant fact as part of a renewal evaluation. The Commission is obliged to judge requests for renewal based on a station's service to its viewers during the preceding term of its license via its over-the-air broadcast signal (unless during that time there have been violations of the Act or the FCC's Rules). If a station is capable of providing exemplary service with a handful of employees, that should be of no concern to the Commission, just as it would be no defense if a delinquent station employed hundreds of people but provided inadequate service.⁴⁵

Fox therefore respectfully submits that VNJ's allegations about misrepresentation and lack of candor – which center entirely on matters related to quantities of news programming and staff levels – cannot possibly form the basis for a proper review of WWOR-TV's renewal application. In this regard, the LOI, in seeking to ascertain detailed information about developments since June 1, 2007, and about how WWOR-TV engages in news coverage (and the precise numbers of employees devoted to various types of newsgathering), constitutes a dramatic and dangerous departure from the FCC's historic refusal to wade into these constitutionally suspect waters.

The Commission Should Be Wary of Operating a Renewal Regime That Results in an Unconstitutionally Vague Application of Law

If, notwithstanding its precedent discussed above, the Commission were to evaluate WWOR-TV on the basis of its programming or newsgathering decisions, or if it were to abandon its approach to Section 309(k), the FCC would run a substantial risk of being deemed to be operating a statutory and regulatory scheme so replete with vagueness that it could not possibly be constitutional. No broadcaster could know with any degree of confidence whether its news and public affairs programs, and its staffing levels, are adequate to meet the Commission's standards.

As the Second Circuit recently explained, "[i]t is a basic principle that a law or regulation 'is void for vagueness if its prohibitions are not clearly defined.'"

⁴⁵ As noted above, like its submissions regarding news content, Fox has presented information about WWOR-TV's employees to the Commission only because of, and to the extent necessary to respond to, the VNJ Petition to Deny.

A law or regulation is impermissibly vague if it does not ‘give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.’”⁴⁶ Importantly, the First Amendment “places a special burden on the government to ensure that restrictions on speech are not impermissibly vague.”⁴⁷ The FCC consistently has professed that it is not permitted to sit in review of news content or quantity; it also has made clear that Section 309(k) of the Act requires a retrospective evaluation based on a fixed period of time. If the Commission were to change course now on either front, it would only serve to make indiscernible the standards upon which it evaluates renewal applications. “If the FCC cannot anticipate what will be considered [unlawful] under its policy, then it can hardly expect broadcasters to do so.”⁴⁸

For that matter, when standards become indiscernible, so too does “the risk that such standards will be enforced in a discriminatory manner.”⁴⁹ The vagueness doctrine is premised in part on avoiding that very risk. “If government officials are permitted to make decisions on an ‘ad hoc’ basis, there is a risk that those decisions will reflect the officials’ subjective biases.”⁵⁰ In the context of licensing, the Supreme Court has expressed concern that regulations impacting speech not provide government too much discretion, because “such discretion has the potential for becoming a means of suppressing a particular point of view.”⁵¹

Fox Has Complied with Sections 1.17 and 1.65 of the FCC’s Rules

Putting aside whether the Commission even should be entertaining this inquiry, Fox’s actions do not constitute a violation of Sections 1.17 or 1.65 of the FCC’s Rules because neither changes made with respect to WWOR-TV’s news quantities and staff levels nor any misunderstanding relating to the August 26 Letters

⁴⁶ *Fox Television Stations, Inc. v. FCC*, 613 F.3d 317, 328 (2d Cir. 2010) (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972) (other internal citation omitted)).

⁴⁷ *Id.* (citing *Perez v. Hoblock*, 368 F.3d 166, 175 n.5 (2d Cir. 2004) (“[A] law or regulation that ‘threatens to inhibit the exercise of constitutionally protected rights,’ such as the right of free speech, will generally be subject to a more stringent vagueness test.”)) (other internal citations omitted).

⁴⁸ *Fox Television*, 613 F.3d at 331.

⁴⁹ *Id.* at 332.

⁵⁰ *Id.* (citing *Grayned*, 408 U.S. at 108-09).

⁵¹ *Forsyth County, Ga. v. Nationalist Movement*, 505 U.S. 123, 130 (1992) (internal quotation marks omitted).

can be deemed to relate to material facts or matters of decisional significance, as is required by the rules.

Fox does not concede that Exhibit A to the August 26 Letters was misleading (or incorrect in a material way) when it was submitted. In particular, as described in the January 2010 Letter and the January 2011 Letter, Exhibit A to the August 26 Letters at most constituted an inadvertent oversight, insofar as it neglected to date the exhibit while using the present tense to describe certain facts relating to WWOR-TV's news and public affairs programming and its staffing levels during the license term at issue. Given that WWOR-TV reduced its staffing levels and certain amounts of news and public affairs programming in July 2009, Fox understands that the use of the present tense in Exhibit A to the August 26 Letters may have led to some immaterial confusion.

Nonetheless, Fox continues to believe that the information in Exhibit A to the August 26 Letters was not "incorrect" or "misleading" for many reasons, including the fact that the context of the exhibit – and the circumstances in which it was presented to the FCC – made clear that Fox's statements related to the preceding term of WWOR-TV's license. There is a requirement of intentional deception inherent in the term "misleading" that makes "misleading" information different than information that merely is confusing, mistaken or inadvertently erroneous. To the degree that WWOR-TV's news programming and staffing levels are capable of being relevant matters of inquiry for the Commission at all, those levels are relevant *at most* to WWOR-TV's pending license renewal application (the only matter about which Fox met with the Commission in connection with the August 26 Letters). Thus, the presentation of facts about programming and staffing levels should not be deemed incorrect or misleading when the information was used in connection with the FCC's review of a finite, specific renewal period (and when it was not used with any intent to deceive).

Indeed, WWOR-TV's news and public affairs programs are broadcast over-the-air. The changes in program length were openly made (and were identified in publicly-available program listings for the station), as would have been apparent to anyone who watched the station. This further belies any notion that the information provided to the Commission was, or could have been, "misleading."⁵²

⁵² The changes also were widely reported about, when made, in daily newspapers serving the metropolitan region corresponding with WWOR-TV's service area. *See, e.g.,* Richard Huff, *Weekend News on Chopping Block at Ch. 9*, New York Daily News, May 15, 2009 (noting that WWOR-TV, "as part of an ongoing, overall review on how to survive and cut costs, ha[s] raised the idea of eliminating weekend newscasts"); Richard Huff, *New Ch. 9 Cuts Hit 2 Reporters*,

For the same reasons, Exhibit A to the August 26 Letters should not be deemed a violation of Section 1.17 of the Commission's Rules. Section 1.17(a)(1) prohibits a licensee from "intentionally" providing to the FCC an incorrect or misleading written or oral statement relating to a *material* fact.⁵³ Likewise, with respect to written submissions, Section 1.17(a)(2) governs *material* factual information that is incorrect or misleading, and only applies when a licensee lacks a "reasonable basis for believing that any such material factual statement is correct and not misleading."⁵⁴ (Note that, by the plain text of the rule, this materiality standard relates to whether the facts themselves are significant, not the degree to which any particular fact might be incorrect or misleading.)

As Fox demonstrated in the January 2011 Letter, it had neither the intent nor any motive to mislead the Commission. In fact, as the O'Connell Declaration makes clear, Fox recalls that it did orally notify Commission staff at the August 2009 meetings that macro-economic conditions, including a significant recession, had compelled WWOR-TV to undertake changes.⁵⁵ Although Fox did not focus on these changes at the meetings, which were primarily intended to cover legal arguments related to the station's renewal status, the Commission should not ignore the fact that Fox mentioned the issue when evaluating VNJ's accusations. Indeed, Exhibit A to the August 26 Letters should not be considered in isolation, but instead should be viewed in the context in which it was submitted. Given that the factual statements had been a topic of general discussion at the August 25 meetings, Commission staff had been reminded, as Fox has contended all along, that Exhibit A was meant to serve as a retrospective review of WWOR-TV's service during the preceding term of its license.

Moreover, Fox subsequently discussed the fact that changes had been made at WWOR-TV in meetings with Commissioner Clyburn and staff for Commissioner Baker in September 2009. Dennis Swanson, Fox's President of Station Operations, came to Washington for these meetings. Mr. Swanson discussed how, as a result of the national financial crisis, WWOR-TV was losing money and could no longer afford to broadcast a full hour of news each day. He explained that the station had cut its daily newscast from one hour to 30 minutes and that Fox had

New York Daily News, June 12, 2009 (reporting on plans for layoffs at WWOR-TV after July 1, 2009).

⁵³ 47 C.F.R. § 1.17(a)(1) (emphasis supplied).

⁵⁴ 47 C.F.R. § 1.17(a)(2) (emphasis supplied).

⁵⁵ See January 2011 Letter, at 10-12 and O'Connell Declaration, ¶¶ 6-9.

reduced staff at WWOR-TV by approximately 35%. He also noted that, even after accounting for these changes, WWOR-TV's news operations lost money.⁵⁶

In light of Fox's independent decision to update the verb tense, submit the revised exhibit to the FCC, and provide details of the changes at WWOR-TV in meetings with two Commissioners' offices (and before any question about it had been raised by anyone), there can be no doubt that Fox never intended to mislead, deceive or be anything other than candid with the Commission. Under these circumstances, it would defy logic for anyone to conclude that Fox intentionally misled the Commission only days before the Swanson meeting.⁵⁷

In its order updating Section 1.17, the Commission explained that "material" has been defined as "important," "more or less necessary," [and] "having influence or effect."⁵⁸ The Commission specifically rejected an alternative version of the rule that would have applied to any information "bearing on any matter within the jurisdiction of the Commission."⁵⁹ Rather, the FCC said that it did not, via Section 1.17, "intend to create arbitrary constraints on what parties could say – or not say Accordingly, we wish to clarify that . . . the representations and omissions we are concerned about are those material to the issues before the Commission and that *we do not intend the rule to apply to representations or omissions that are insignificant or extraneous to the issues.*"⁶⁰ The information in Exhibit A is and always has been accurate as to the license renewal period in question. Even if the information regarding programming and staffing levels in Exhibit A was unintentionally confusing when submitted in August 2009, that information was not material, inasmuch as the Commission does not sit in judgment of the quantity of news and because the then-current performance of WWOR-TV was not under Commission review.

Even if Fox had been aware that its verb tense in Exhibit A was confusing when it submitted the August 26 Letters – which it was not – the

⁵⁶ See Declaration of Dennis Swanson, President, Station Operations, Fox Television Stations, Inc., attached hereto.

⁵⁷ As the January 2011 Letter also made clear, neither VNJ nor any other advocacy group has submitted to the Commission any evidence whatsoever regarding Fox's intent. *Id.* at 3, 6.

⁵⁸ *In re Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission*, 18 FCC Rcd 4016, 4020 n. 4 (2003) ("1.17 Order").

⁵⁹ *Id.* at 4018.

⁶⁰ *Id.* at 4019.

Commission still could not find that Fox lacked a “reasonable basis” to believe that the information was correct and not misleading. Given the context of Section 309(k) of the Act, the matters discussed in Exhibit A were pertinent, at most, to the preceding term of WWOR-TV’s license. Thus, Fox was reasonable in its belief that, in context, Exhibit A to the August 26 Letters was correct and not misleading.⁶¹

Likewise, Section 1.65 of the Commission’s Rules is inapplicable in the present circumstances. Section 1.65 requires that, when “information furnished in [a] pending application is no longer substantially accurate and complete in all significant respects,” an applicant must amend the application “so as to furnish such additional or corrected information as may be appropriate.”⁶² Since WWOR-TV’s renewal application did not contain inaccurate or incomplete information, Section 1.65 does not require any amendment. To the extent that the rule also requires applicants to update the FCC if “there has been a substantial change as to any other matter which may be of decisional significance,”⁶³ Fox already has made clear that the staffing and programming levels of WWOR-TV in 2009 could not possibly be of “decisional significance” with respect to the station’s renewal application.⁶⁴ If the substantive portion of Section 1.65 is inapposite, then it logically follows that the rule did not obligate Fox to “serve[] upon parties of record”⁶⁵ copies of the amended Exhibit A that it used in September 2009 (which, in any case, Fox publicly filed as part of this docket).

In addition, if it were to hold that Fox had a duty to update the FCC regarding the number of hours of certain types of programming, or the number of employees, the Commission would expose to liability hundreds of broadcasters

⁶¹ See *id.* at 4021 (stating that “‘reasonableness’ depends on the circumstances; we do not intend to create arbitrary or unrealistic burdens on people making, for example, informal statements to the Commission, or giving ‘ball park figures’”) (internal citation omitted).

⁶² 47 C.F.R. § 1.65(a).

⁶³ *Id.*

⁶⁴ See, e.g., *In re Applications of WQED Pittsburgh, et al.*, 15 FCC Rcd 202, 208 n. 15 (1999) (holding that, because station was “not required to disclose its programming decisions in connection with the assignment application,” FCC “disagree[d] . . . that [the station] somehow violated Section 1.65 of the rules, which requires an applicant to promptly inform the Commission of any significant changes that may be of decisional significance in the consideration of its application,” when it made programming changes) (*vacated on other grounds*, 15 FCC Rcd 2534 (2000)).

⁶⁵ 47 C.F.R. § 1.65(a).

whose renewal applications remain pending.⁶⁶ Surely the FCC does not expect every broadcaster to provide the Federal government with an update every time it makes changes to programming hours or if it is forced to engage in layoffs of staff. Particularly when hundreds of renewal applications remain pending for years at a time, it would be untenable (and likely unconstitutional) for the Commission to demand that it be notified every time a licensee makes a change regarding news quantity or staffing.

* * *

For all of these reasons, Fox respectfully requests that the Commission close this inquiry without taking any further action and that it promptly address the merits of WWOR-TV's renewal application.

Should you have any questions concerning this matter, kindly advise the undersigned.

Respectfully submitted,



Antoinette Cook Bush
Jared S. Sher
Counsel to Fox Television Stations, Inc.

Enclosures

cc: William Lake, FCC
Charles Lovey, Voice for New Jersey
Donna Sandorse, Voice for New Jersey
Angela Campbell, Counsel to UCC and Rainbow/PUSH Coalition
Andrew Jay Schwartzman, Media Access Project

⁶⁶ See *FCC Retrains Notice No 'Excuse' for Any Lack of Good Faith, McDowell Says*, Communications Daily (Mar. 2, 2011) (reporting that 450 license renewal applications are currently pending).



Exhibit 1

**WWOR-TV Schedule for the week of
6-Jul-09**

REVISION #4

| | Monday 06-Jul-09 | Tuesday 07-Jul-09 | Wednesday 08-Jul-09 | Thursday 09-Jul-09 | Friday 10-Jul-09 | Saturday 11-Jul-09 | Sunday 12-Jul-09 | |
|--------|--|---|--|--|--------------------------------------|----------------------------------|-------------------------------|--------|
| | PAID | PAID | PAID | PAID | PAID | PAID | HEROES AMONG US | 5:00A |
| | PAID | PAID | PAID | PAID | PAID | PAID | PAID | 5:30A |
| | PAID | PAID | PAID | PAID | PAID | PAID | PAID | 6:00A |
| 6:30 | PAID | PAID | PAID | PAID | PAID | PAID | PAID | 6:30 |
| 7:00 | KENNETH COPELAND ANIMAL ATLAS CLASSICS - E! 424 | KENNETH COPELAND ANIMAL ATLAS 524 | KENNETH COPELAND JACK HANNA INTO WILD 211 | KENNETH COPELAND ANIMAL RESCUE 768 | KENNETH COPELAND DOG TALES 146 | PAID | PAID | 7:00 |
| 7:30 | ONE ON ONE 98 | ONE ON ONE 99 | ONE ON ONE 100 | ONE ON ONE 101 | ONE ON ONE 102 | PAID | PAID | 7:30 |
| 8:00 | SCRUBS 60 | SCRUBS 61 | SCRUBS 62 | SCRUBS 63 | SCRUBS 64 | PAID | PAID | 8:00 |
| 8:30 | STILL STANDING 215 | STILL STANDING 216 | STILL STANDING 218 | STILL STANDING 217 | STILL STANDING 219 | PAID | A.R. BERNARD | 8:30 |
| 9:00 | 700 CLUB | 700 CLUB | 700 CLUB | 700 CLUB | 700 CLUB | PAID | PAID | 9:00 |
| 9:30 | | | | | | PAID | PAID | 9:30 |
| 10:00 | PEOPLE'S COURT (2nd run) 12040 | PEOPLE'S COURT (2nd run) 12038 | PEOPLE'S COURT (2nd run) 12042 | PEOPLE'S COURT (2nd run) 12024 | PEOPLE'S COURT (2nd run) 12025 | PAID | PAID | 10:00 |
| 10:30 | | | | | | PAID | PAID | 10:30 |
| 11:00 | CRISTINA'S COURT 3129 | CRISTINA'S COURT 3128 | CRISTINA'S COURT 3126 | CRISTINA'S COURT 3127 | CRISTINA'S COURT 3125 | PAID | PAID | 11:00 |
| 11:30 | CRISTINA'S CT-2ND RUN 3030 | CRISTINA'S CT-2ND RUN 3099 | CRISTINA'S CT-2ND RUN 3099 | CRISTINA'S CT-2ND RUN 3101 | CRISTINA'S CT-2ND RUN 3102 | PAID | JACK HANNA INTO WILD 211 | 11:30 |
| 12:00N | JUDGE DAVID YOUNG 2004 | JUDGE DAVID YOUNG 2042 | JUDGE DAVID YOUNG 2015 | JUDGE DAVID YOUNG 2014 | JUDGE DAVID YOUNG 2070 | PAID | NEW JERSEY NOW | 12:00N |
| 12:30P | JUDGE DAVID YOUNG 2018 | JUDGE DAVID YOUNG 2067 | JUDGE DAVID YOUNG 2054 | JUDGE DAVID YOUNG 2013 | JUDGE DAVID YOUNG 2052 | | REAL TALK | 12:30P |
| 1:00 | FAMILY COURT 1036 | FAMILY COURT 1037 | FAMILY COURT 1038 | FAMILY COURT 1020 | FAMILY COURT 1039 | MY 9 MOVIE | MY 9 MOVIE | 1:00 |
| 1:30 | FAMILY COURT (BF) 1006 | FAMILY COURT (BF) 1007 | FAMILY COURT (BF) 1008 | FAMILY COURT (BF) 1009 | FAMILY COURT (BF) 1010 | BLACKHAWK DOWN (B) | THE MUSKETEER (B) (E) | 1:30 |
| 2:00 | TRIVIAL PURSUIT 156 | TRIVIAL PURSUIT 157 | TRIVIAL PURSUIT 158 | TRIVIAL PURSUIT 159 | TRIVIAL PURSUIT 160 | | | 2:00 |
| 2:30 | TRIVIAL PURSUIT 151 | TRIVIAL PURSUIT 152 | TRIVIAL PURSUIT 153 | TRIVIAL PURSUIT 154 | TRIVIAL PURSUIT 155 | | | 2:30 |
| 3:00 | FAMILY FEUD 8061 | FAMILY FEUD 8062 | FAMILY FEUD 8063 | FAMILY FEUD 8064 | FAMILY FEUD 8065 | | AMERICAN LATINO 721 | 3:00 |
| 3:30 | FAMILY FEUD 8151 | FAMILY FEUD 8152 | FAMILY FEUD 8153 | FAMILY FEUD 8154 | FAMILY FEUD 8155 | | LATINATION 521 | 3:30 |
| 4:00 | HALF & HALF 112 | HALF & HALF 118 | HALF & HALF 117 | HALF & HALF 119 | HALF & HALF 122 | THE DEAD ZONE (1st run) 79 | ONE ON ONE 16 | 4:00 |
| 4:30 | BERNIE MAC 304 | BERNIE MAC 307 | BERNIE MAC 314 | BERNIE MAC 305 | BERNIE MAC 319 | | ONE ON ONE 17 | 4:30 |
| 5:00 | TYRA BANKS 4047 | TYRA BANKS 4003 | TYRA BANKS 4074 | TYRA BANKS 4054 | TYRA BANKS 4093 | HALF & HALF 305 | HOUSE OF PAYNE 297 | 5:00 |
| 5:30 | | | | | | KING OF QUEENS 721 | HOUSE OF PAYNE 298 | 5:30 |
| 6:00 | KING OF QUEENS 819 | KING OF QUEENS 718 | KING OF QUEENS 122 | KING OF QUEENS 322 | KING OF QUEENS 518 | KING OF QUEENS 722 | BOSTON LEGAL 221 | 6:00 |
| 6:30 | KING OF QUEENS 519 | KING OF QUEENS 520 | KING OF QUEENS 521 | KING OF QUEENS 522 | KING OF QUEENS 523 | EVERYBODY-RAY 9608 | | 6:30 |
| 7:00 | HOUSE OF PAYNE 218 | HOUSE OF PAYNE 220 | HOUSE OF PAYNE 221 | HOUSE OF PAYNE 224 | HOUSE OF PAYNE 227 | IDOL REWIND (2nd run) 313 | HOUSE (2nd run) 5514 | 7:00 |
| 7:30 | HOUSE OF PAYNE 219 | HOUSE OF PAYNE 222 | HOUSE OF PAYNE 223 | HOUSE OF PAYNE 225 | HOUSE OF PAYNE 226 | | | 7:30 |
| 8:00 | MY NETWORK TV MASTERS OF ILLUSION | NY YANKEES ON MY9 | MY NETWORK TV THE WORLD'S FUNNIEST MOMENTS HD | MY THURSDAY NIGHT MOVIE | MY NETWORK TV | MY SATURDAY NIGHT MOVIE | LAW & ORDER: SVU 0902 | 8:00 |
| 8:30 | | NY YANKEES @ MINN TWINS | | PASSENGER 57 | WWE SMACKDOWN (O) | VOLCANO | | 8:30 |
| 9:00 | MY NETWORK TV MAGIC'S BIGGEST SECRETS REVEALED HD | | MY NETWORK TV MAGIC'S BIGGEST SECRETS REVEALED HD | Wesley Snipes, Bruce Payne | HD | Tommy Lee Jones, Anne Heche | LAW & ORDER: SVU 0923 | 9:00 |
| 9:30 | | | | | | | | 9:30 |
| 10:00 | MY 9 NEWS | | MY 9 NEWS | MY 9 NEWS | MY 9 NEWS | MY 9 NEWS | MY 9 NEWS | 10:00 |
| 10:30 | | YES PRODUCED WRAP | | | | GIANTS ACCESS BLUE | MY9 SPORTS WRAP | 10:30 |
| 11:00 | LAW & ORDER: CI 5441 | MY 9 NEWS 35 minute edition | LAW & ORDER: CI 5402 | LAW & ORDER: CI 5401 | LAW & ORDER: CI 5403 | AMERICAN CHOPPER 06 | DESPERATE HOUSEWIVES 86 | 11:00 |
| 11:30 | | MY NETWORK TV HEROES AMONG US: | | | | | | 11:30 |
| 12:00M | EVERY. LOVES RAY 0414 | | EVERY. LOVES RAY 9602 | EVERY. LOVES RAY 9604 | EVERY. LOVES RAY 9606 | UFC WIRED 206 | DESPERATE HOUSEWIVES 86 | 12:00M |
| 12:30A | EVERY. LOVES RAY-2nd 0415 | MY NETWORK TV JAIL | EVERY. LOVES RAY (Tue 1st) 0416 | EVERY. LOVES RAY-2nd 9605 | EVERY. LOVES RAY-2nd 9607 | | | 12:30A |
| 1:00 | BERNIE MAC-2ND 110 | MY NETWORK TV JAIL | BERNIE MAC-2ND 113 | BERNIE MAC-2ND 111 | BERNIE MAC-2ND 114 | PAID | PAID | 1:00 |
| 1:30 | MALCOLM IN-MIDDLE 316 | MALCOLM IN-MIDDLE 319 | MALCOLM IN-MIDDLE 318 | MALCOLM IN-MIDDLE 322 | MALCOLM IN-MIDDLE 321 | PAID | PAID | 1:30 |
| 2:00 | PUNK'D | PUNK'D | PUNK'D | PUNK'D | PUNK'D | PAID | PAID | 2:00 |
| 2:30 | PAID (2:30-5A) | PAID (2:30-5A) | PAID (2:30-5A) | PAID (2:30-5A) | PAID (2:30-5A) | PAID (2A-5A) | PAID (2A-5A) | |

WWOR-LOI-000001